

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

**NOTICE OF MOTION**

S4 07 CR 387 (CLB)

-against-

ANGEL DIAZ,

Hearing Requested

Defendant.

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PLEASE TAKE NOTICE, that upon the annexed Affidavit of George E. Fufidio, Jr., Esq. sworn to on the 29<sup>th</sup> day of January, 2008, the annexed Memorandum of Law and all prior proceedings, discovery, and pleadings had herein, the undersigned will move this District Court for the Southern District of New York, at the United States Courthouse, located at 300 Quarropas Street, White Plains, New York 10601 on March 11, 2008, or on any date the Court deems appropriate, for the following relief:

(1) An Order pursuant to F.R.C.P. 7(f) directing the government to provide Angel Diaz with a Bill of Particulars specifically including the following information :

(a) Set forth the specific acts or omissions under Counts One, Two, Four, Five and Seven applicable to Angel Diaz which evince a knowing and willful combining or conspiring to commit the crimes of kidnapping and Hobbs Act robbery; or the knowing and willful commission of the underlying substantive offense charged; including but not limited to, a statement of the approximate date, time and location where it is claimed the defendant joined the conspiracy charged herein or committed the substantive acts alleged;

(2) An Order pursuant to F.R.C.P. 16(a)(1)(E) directing the government to disclose co-defendant statements which inculcate Angel Diaz or any item or exhibit

intended for use during its case-in-chief at trial or which is material to the defense; and for further necessary disclosure;

(3) An Order severing the trial of Angel Diaz from the other defendants in the above captioned indictment pursuant to F.R.C.P. 12 AND F.R.C.P. 14;

(4) An Order directing the government to disclose any evidence of any exculpatory or mitigating nature pursuant to Brady v. Maryland, 373 U.S. 83 (1963); Strickler v. Greene, 527 U.S. 263 (1999); United States v. Agurs, 427 U.S. 97 (1976); United States v. Bagley, 473 U.S. 667 (1985) and their progeny;

(5) An Order directing the government to disclose its witnesses' statements pursuant to F.R.C.P. 26.2 at least thirty (30) days prior to trial in this matter;

(6) An Order directing the government to disclose any intention to offer evidence at trial pursuant to F.R.E. 404(b) against Angel Diaz, at least thirty (30) days prior to trial in this matter;

(7) An Order suppressing any in-court identification of Angel Diaz as a result of an "impermissively suggestive" photographic identification conducted in this case, pursuant to Stovall v. Denno, 388 U.S. 293 (1967); Simmons v. United States, 390 U.S. 377 (1968); or if necessary a pretrial hearing;

(8) An Order permitting the defendant, Angel Diaz, the right to adopt and join any and all relevant and proper motions brought by any co-defendant in this case;

(9) An Order permitting the defendant, Angel Diaz, to make such further motions as may become appropriate during these further proceedings;

(10) For such other and further relief as to this Court may seem just and proper.

Dated: White Plains, N.Y.  
January 29, 2008

Yours, etc.

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George E. Fufidio, Jr. (2441)  
MANCUSO, RUBIN & FUFIDIO  
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White Plains, N.Y. 10601  
(914) 761-9200

TO:

Honorable Charles L. Brieant  
United States District Court  
Southern District of New York  
United States Courthouse  
300 Quarropas Street  
White Plains, New York 10601

Clerk of the Court  
United States District Court  
Southern District of New York  
United States Courthouse  
300 Quarropas Street  
White Plains, New York 10601

Michael J. Garcia, Esq.  
United States Attorney  
Southern District of New York  
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